EXHIBIT A

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19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 RICHARD KADREY *et al.*,   Case No. 3:23-cv-03417-VC-TSH

23   Individual and Representative Plaintiffs,   **DEFENDANT META PLATFORMS, INC.'S
                                                    RESPONSE TO PLAINTIFFS' OBJECTIONS
24   v.   TO META'S REPLY EVIDENCE**

25 META PLATFORMS, INC., a Delaware   Judge: Vince Chhabria
    corporation,
26
                            Defendant.
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1   Defendant Meta Platforms, Inc. ("Meta") hereby responds to Plaintiffs' April 24, 2025

2 Objections to Meta's Reply Evidence. Dkt. 552 ("Obj."). The objections should be rejected.

3   **The Kambadur (ECF543-13), Pineau (ECF 543-14), and Third-Party (ECF 543-12)**

4 **Declarations are not "new" evidence.** The Local Rules state that "[a]ny reply to an opposition

5 may include affidavits or declarations." Civ. L. R. 7-3(c). Evidence is not "new" if it is

6 "appropriately responsive to arguments and evidence raised in [the non-moving party's] opposition

7 papers." *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 877 F. Supp. 2d 838, 857 (N.D. Cal. 2012);

8 *Hodges v. Hertz Corp.*, 351 F. Supp. 3d 1227, 1249 (N.D. Cal. 2018).

9   Each of the declarations to which Plaintiffs have objected was properly responsive to issues

10 raised in Plaintiffs' Opposition. The Pineau and Kambadur Declarations responded to Plaintiffs'

11 assertions that "there is no evidence to indicate" that certain of Meta's uses of book datasets were

12 transformative (Pl's Opp. at 14), including experimental use of LibGen in 2022 for research and

13 development purposes.   Opp. at 11-14; Dkt. 543-13 (Kambadur), ¶¶ 4-7; Dkt. 543-14 (Pineau), ¶¶

14 5-6. Plaintiffs contend that these declarations are "inconsistent with the deposition testimony

15 provided by the same witnesses," but the deposition excerpts cited by Plaintiffs demonstrate that

16 the opposite is true.[1] *See* Obj. Ex. A (Kambadur), at 118:8-14, 274:1-288:1, 289:14-294:5, 295:13-

17 297:15; Ex. B (Pineau), 135:8-154:17. For example, Dr. Pineau testified in her deposition that the

18 2022 experiments on LibGen involved training multiple versions of the model to assess the impact

19 of the data, which directly tracks the statements made in her declaration (*id*., Ex. B, 137:5-139:4);

20 and Dr. Kambadur testified about her first-hand knowledge of the process for deciding which

21 datasets to use for which models, including whether to use LibGen. *Id*., Ex. A, 35:5-22. The

22 declarations are also consistent with documentary evidence cited by Plaintiffs, including Pritt

23 Exhibits 32 and 36, which reflect internal communications contemporaneous with Meta's 2022

24 LibGen download discussing, respectively, approval of use of LibGen for exploratory purposes and

25 ablation experiments concerning the same. And because Plaintiffs had a full opportunity to

26 examine Drs. Pineau and Kambadur about experimental uses of datasets including LibGen (and, in

27

28 [1] Plaintiffs also state that Dr. Pineau "disclaimed having any knowledge of whether Meta ever
decided to use LibGen to train its Llama models," (Obj. at 2), but the cited testimony reflects only
that she did not know whether LibGen had been used to train Llama 3.

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1   fact, questioned them extensively about Pritt Exhibit 36, including in the excerpts in Exs. A and

2   B), Plaintiffs' claims of prejudice are without merit.

3   The Third-Party Declaration responds to Plaintiffs' reliance on an otherwise

4   unauthenticated third-party agreement cited for the first time in Plaintiffs' Opposition. Opp. at 29-

5   30. Following the Court's authorization of third-party discovery on this agreement on January 21,

6   2025 (Dkt. 405-406), Meta worked diligently during a period concurrent with the third parties'

7   ongoing performance under the agreement to authenticate and confirm basic details about the

8   agreement. Meta served the Third-Party Declaration on Plaintiffs immediately after receiving it on

9   April 4, 2025, *before* Plaintiffs filed the Opposition on April 7, 2025. Plaintiffs' claims of prejudice

10   are also without merit as the declaration is concise and consists entirely of undisputed basic

11   background information.

12   **The Sinkinson Declaration is not "new" expert discovery.** The Sinkinson Declaration

13   was responsive to Plaintiffs' arguments about whether certain agreements are evidence of an AI

14   licensing market for Plaintiffs' books. Opp. at 29-30; Dkt. 543-15 (Sinkinson), ¶¶ 2-3. It consists

15   of opinions taken verbatim from the expert reports he served during expert discovery, about which

16   he was fully deposed. *Id.*, ¶¶ 1-4. Accordingly, it does not violate the Court's March 25 order,

17   both because it does not concern the torrenting-related expert discovery and was not "new."

18   **Plaintiffs' defense of the Butterick Declaration is improper.** Plaintiffs' defense of the

19   Butterick Declaration is not the proper subject of objections under Local Rule 7-3(d)(1). Even if

20   considered, Plaintiffs' defense should be rejected: Plaintiffs do not address the facts that (1)

21   Plaintiffs had another expert conduct the same analysis of Books3 that Mr. Butterick performed on

22   Gutenberg (underscoring that Mr. Butterick's opinions are the province of an expert); and (2) Mr.

23   Butterick's declaration is clearly comprised of opinions and inference, not a Fed. R. Evid. 1006

24   "summary," as evidenced by his repeated qualification of observations with the phrase "appears

25   to" or similar phrases.

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